

1 BILL NO. S-85-04-14

2 SPECIAL ORDINANCE NO. S- 59-85

3 AN ORDINANCE approving Contract  
4 #408-85, Phase II, Southwest  
5 Interceptor S-2, GM, by the City  
6 of Fort Wayne by and through its  
7 Board of Public Works and Safety  
8 and Bercot, Inc.

9 NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF  
10 THE CITY OF FORT WAYNE, INDIANA:

11 SECTION 1. That the annexed Contract #408-85, Phase II,  
12 Southwest Interceptor S-2, GM, by the City of Fort Wayne by and  
13 through its Board of Public Works and Safety and Bercot, Inc., is  
14 hereby ratified, and affirmed and approved in all respects. The  
15 work under said Contract requires:

16 Sanitary Sewer beginning at a pro-  
17 posed manhole, being a part of this  
18 construction phase and the terminus  
19 of Phase I, located 6+ L.F. North  
20 and 230+ L.F. East of the center-  
21 line intersection of Orchard Ridge  
22 Drive and Lower Huntington Road;  
23 thence Westerly along Lower Hun-  
24 tington Road with a 21 inch diameter  
25 sewer 5,275+ L.F. to a proposed man-  
26 hole; thence continuing westerly  
27 along Huntington Road with an 18  
28 inch diameter sewer 3,313+ L.F. to  
29 a proposed manhole which will be  
30 a part of this Phase II of this  
31 resolution and located 12+ L.F.  
32 South and 6+ L.F. East of the cen-  
terline intersection of Coverdale  
Road and Lower Huntington Road;

the Contract price is Five Hundred Ninety-Six Thousand Three Hun-  
dred Sixty-Four and No/100 Dollars (\$596,364.00).

SECTION 2. Prior Approval was received from Council  
with respect to this Contract on March 12, 1985. Two (2) copies  
of the Contract attached hereto are on file with the City Clerk,  
and are available for public inspection.

SECTION 3. That this Ordinance shall be in full force  
and effect from and after its passage and any and all necessary  
approval by the Mayor.



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Page Two



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Councilmember

APPROVED AS TO FORM  
AND LEGALITY



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Bruce O. Boxberger, City Attorney



Read the first time in full and on motion by Henry, seconded by Eustace, and duly adopted, read the second time by title and referred to the Committee City of Fort Wayne (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne Indiana, on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M., E.S.

DATE: 4-9-85 Nadyn Eckerhoff  
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Henry, seconded by Stier, and duly adopted, placed on its passage. PASSED (~~LOST~~) by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>	<u>TO-WIT:</u>
<u>TOTAL VOTES</u>	<u>9</u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
<u>BRADBURY</u>	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
<u>BURNS</u>	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
<u>EISBART</u>	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
<u>GiaQUINTA</u>	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
<u>HENRY</u>	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
<u>REDD</u>	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
<u>SCHMIDT</u>	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
<u>STIER</u>	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
<u>TALARICO</u>	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>

DATE: 4-23-85 Nadyn Eckerhoff  
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (~~ANNEXATION~~) (~~APPROPRIATION~~) (~~GENERAL~~) (~~SPECIAL~~) (~~ZONING MAP~~) ORDINANCE (RESOLUTION) NO. 1-59-85 on the 23rd day of April, 1985,

ATTEST: (SEAL)  
Nadyn Eckerhoff Mark E. G. Quint  
SANDRA E. KENNEDY, CITY CLERK PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 24th day of April, 1985, at the hour of 11:30 o'clock PM M., E.S.T.

Nadyn Eckerhoff  
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 25th day of April, 1985, at the hour of 9:00 o'clock PM M., E.S.T.

Win Moses, Jr.  
WIN MOSES, JR., MAYOR



CONTRACT NO. 408-85

PHASE II

THIS CONTRACT made and entered into in triplicate this 27<sup>th</sup> day of March, 1985, by and between BERCOT, INC., herein called CONTRACTOR, and the City of Fort Wayne, Indiana, an Indiana Municipal Corporation, acting by and through the Mayor and the Board of Public Works and Safety herein called OWNER,

WITNESSETH that the Contractor and the Owner for the considerations hereinafter named, agrees as follows:

#### ARTICLE 1. SCOPE OF WORK

Contractor shall furnish all labor, material, equipment, tools, power, transportation, miscellaneous equipment etc., necessary for the installation of the following:

SOUTHWEST INTERCEPTOR S-2; Phase II

all according to Fort Wayne Pollution Control Engineering Department Drawing No. SY-11141, Sheets 1 thru 20 inclusive and do everything required by this contract and the other documents constituting a part hereof.

#### ARTICLE 2. THE CONTRACT SUM

The Owner shall pay Contractor for the performance of the contract the unit price sum of Five hundred ninety-six thousand, three hundred sixty-four and no/100 dollars----- (\$596,364.00).

In event the amount of work is increased or decreased by Owner, the contract sum shall be increased or decreased according to the unit price schedule set forth in the Contractor's Proposal. (See Exhibit "A")

#### ARTICLE 3. PROGRESS PAYMENTS

The Owner shall make payments on account of the contract as provided herein, as follows:

Monthly progress payments will be made by Owner upon submission of a statement of quantities of work completed and/or materials supplied to the job site as of the end of each month. On or about the 15th day of the following month, ninety percent (90%) of the value of the work performed up to the first day of that month (based on the contract price of labor and materials incorporated in the work) and as estimated by the Contractor and approved or revised by the Engineering Department of the Owner, less the aggregate of previous payments, will be paid by Owner to the Contractor.

#### ARTICLE 4. ACCEPTANCE AND FINAL PAYMENT

Final payment shall be due at the time the work is fully completed and accepted and the contract is fully performed.

Upon filing of a Completion Affidavit by the Contractor that the work is ready for final inspection and acceptance, the Board of Public Works and Safety will direct the Engineering Department of the Owner to promptly make such inspection. When the Engineering Department finds the work acceptable under the contract, and the contract is fully performed, it shall so inform the Board of Public Works and Safety which shall issue a final certificate stating that the work

Contract No. 408-85  
Phase II



**EXHIBIT "A"**  
**Resolution 408-1985 - Phase II**

1.	18" Sewer Pipe	Thirty-Seven and no/100	\$ 37.00
2.	21" Sewer Pipe	Fifty and no/100	\$ 50.00
3A.	Std. MH Type J-1	One Thousand Three Hundred and no/100 Dollars	\$ 1,300.00
4A.	Deleted Per Add. #1	No and no/100 Dollars	\$ 0.00
5.	6" Tap Tee or Wye	One Hundred Fifteen and no/100 Dollars	\$ 115.00
6.	6" Building Sewer New Taps	Ten and no/100 Dollars	\$ 10.00
7A.	#73 or #53 Sp. Backfill	Ten and no/100 Dollars	\$ 10.00
8.	Deep Strength Asphalt Street Replacement	Nineteen and 50/200 Dollars	\$ 19.50
9.	1" A-2 Asphalt Street Surface	One and 60/100 Dollars	\$ 1.60
10.	Stone Surface Restoration	Five and no/100 Dollars	\$ 5.00
11.	MH #8 with Appurtenances	Three Thousand Two Hundred and no/100 Dollars	\$ 3,200.00
12.	Lower 8" Water Main	One Thousand Nine Hundred Seventy and no/100 Dollars	\$ 1,970.00
13.	Guard Rail Replacement	Two Thousand Five Hundred and no/100 Dollars	\$ 2,500.00
14A	70 LF 18" Pipe and Bulkhead	Two Thousand Four Hundred Fifty and no/100 Dollars	\$ 2,450.00
15	70 LF 12" Pipe & Bulkhead	Two Thousand Four Hundred Fifty and no/100 Dollars	\$ 2,450.00
16.	Seeding, Mulch & Fert.	One and 55/100 Dollars	\$ 1.55
17.	Unstable Soil Excavation	Seventeen and no/100 Dollars	\$ 17.00



provided for in this Contract has been completed and is accepted thereupon, and the entire balance of the Contract sum shall be due and payable to the Contractor provided only that Contractor shall first furnish Owner, if requested to do so, satisfactory evidence that all persons who have supplied labor, material or equipment for the work have been fully paid.

#### ARTICLE 5. WORKMEN'S COMPENSATION ACT

Upon contract award, the Contractor will furnish immediately a certificate from the Industrial Board of the State of Indiana that he/she has complied with Section 5, 68 and 69 of the Workmen's Compensation Act, approved 14 March 1929, in accordance with Section 14 of the Compensation Act (Acts 1929, page 545, being I.C. 22-3-2-14 or any supplemental statutes thereof). It is further stipulated that any judgment rendered against the City of Fort Wayne in any suits for damages for injury to real or personal property, or for any injury to real or personal property, or for any injury, sustained by any person growing out of any act or doing of Contractor, or its agents, employees or workmen and that any judgment of any court or award of any Board of Arbitrators or of the State Industrial Board of the State of Indiana rendered against the State of Indiana, now in force, relating to compensation for accidental injuries or death suffered by his employees or the employees of any subcontractor or subcontractors in the course of their employment, when notice of the pendency of such suit, hearing or arbitration shall have been given said contractor, shall be conclusive against Contractor as to amount, liability and all other things pertaining thereto; it being the intent of the parties, hereto that Contractor indemnify and hold harmless the City of Fort Wayne, Indiana.

#### ARTICLE 6. NONDISCRIMINATION OF LABOR

The Contractor further agrees to be bounded by Section 15-13 (as amended), of the Code of the City of Fort Wayne, Indiana, of 1974, passed by the Common Council of the City of Fort Wayne, Indiana, as General Ordinance No. G-34-78 (as amended) on December 12, 1978, a copy of which Section is attached and incorporated herein and made a part hereof. (M/FER/6 - M/FER/8)

#### ARTICLE 7. PREVAILING WAGE SCALE

The Contractor agrees to pay and also require of his subcontractors that they pay wage rates on the work covered by this contract which shall not be less than the prescribed scale of wages as determined pursuant to the provisions of Statutes of Indiana and Ordinances of the City of Fort Wayne, attached hereto and made a part hereof. (WR/1)

#### ARTICLE 8. COMPONENT PARTS OF THIS CONTRACT

The following documents are as fully a part of the contract as if hereto attached or herein repeated:

- A. Advertisement for Bids, for Contract No. 408-85, Phase II,
- B. Instructions to Bidders for Contract No. 408-85, Phase II,
- C. Contractor's Proposal dated January 30, 1985,
- D. Fort Wayne Water Pollution Control Engineering Department Construction Drawing No. SY-11141 sheets 1 thru 20 inclusive,
- E. General Specifications and Conditions, detailed specifications, construction standards for the installation of storm and sanitary sewers adopted July 23,

Contract No. 408-85  
Phase II



- 1980, and addendums thereof of the City of Fort Wayne's Water Pollution Control Engineering Department,
- F. Workmen's Compensation Act Statutes of State of Indiana and Ordinances of City of Fort Wayne,
  - G. Non Discrimination of Labor General Ordinance No. G-34-78 (as amended),
  - H. Prevailing wage scale,
  - I. Performance Bond,
  - J. Labor and Material Payment Bond,
  - K. Comprehensive Liability Insurance Coverage,
  - L. Application for road cut permit (City and County)
  - M. Escrow Agreement,
  - N. Notice of Award,
  - O. Notice to Proceed,
  - P. Change Order,
  - Q. Notice of Final Acceptance,
  - R. Special Provisions, and
  - S. Soil Boring Appendix.
  - T. Allen County Drainage Board legal drain crossing permits.
  - U. Addendum No. 1

#### ARTICLE 9. GUARANTEE OF WORKMANSHIP

The Contractor shall warrant all materials, labor and equipment furnished and work performed for a period of one (1) year from date of final acceptance in writing by the Owner.

#### ARTICLE 10. INDEMNITY

Contractor shall furnish to owner, within ten (10) days of the date hereof a certificate from an insurer acceptable to owner showing personal injury and property damage. Insurance inforce issued in connection with the work to be done under this Contract in accordance with said Specifications of the City of Fort Wayne, Division I, Section 7.

#### ARTICLE 11. ADJUSTMENTS OF DISPUTES

All questions or controversies which may arise between the Contractor and the Owner under the provisions of this Contract shall be subject to the decision of the Chief Engineer of the Fort Wayne Water Pollution Control Department and his decision shall be final and conclusive upon the parties.

Provided, however, no changes in the plans, specifications, or other phases or the work covered by this Contract will be permitted except on prior written authorization by the Board of Public Works and Safety.

#### ARTICLE 12. COMPLETION DATE

The Contractor agrees to complete the work specified in the within contract in 180 consecutive calendar days after having been ordered by the Owner to commence work under this contract, see special notes: L. page SP/3

#### ARTICLE 13. COUNCILMANIC APPROVAL

This Agreement, although executed on behalf of the Owner by the Mayor and Board of Public Works and Safety of the City of Fort Wayne, Indiana, shall not be binding upon the Owner unless and until the same shall have been ratified and approved by the Common Council of the City of Fort Wayne, Indiana, and should said Common Council fail to approve the same within sixty (60) days after the

date hereof, then this Contract shall become wholly void.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

BY:

Steve Bercot  
Steve Bercot, President

BY:

W. Dean Bercot  
W. Dean Bercot, Secretary

CITY OF FORT WAYNE, INDIANA

BY:

Win Moses, Jr.  
Win Moses, Jr., Mayor

ATTEST:

Helen V. Gochenour  
Helen V. Gochenour, Clerk

APPROVED AS TO FORM AND LEGALITY:

R. J. Maffei  
ASSOCIATE CITY ATTORNEY

BOARD OF PUBLIC WORKS AND SAFETY

David J. Kiester  
David J. Kiester,  
Director of Public Works and Safety

Cosette R. Simon  
Cosette R. Simon,  
Director of Administration and Finance

Lawrence D. Consalvos  
Lawrence D. Consalvos,  
Director of Public Safety

Approved by the Common Council of the City of Fort Wayne, Indiana, on the \_\_\_\_\_  
day of \_\_\_\_\_, 19\_\_\_\_.





Bond No. 53 74 11

☒ **THE WESTERN CASUALTY AND SURETY COMPANY**  
☐ **THE WESTERN FIRE INSURANCE COMPANY**

The Company to provide this bond coverage shall be designated with an ☒.**FORT SCOTT, KANSAS 66701****PERFORMANCE BOND**

Approved by The American Institute of Architects, A.I.A. Document No. A-311 Feb. 1970 ED.

KNOW ALL MEN BY THESE PRESENTS:

That **BERCOT, INC.**  
(Here insert full name and address or legal title of the Contractor)**6015 HUGUENARD ROAD, FORT WAYNE, INDIANA 46818**

as Principal, hereinafter called Contractor, and THE WESTERN CASUALTY AND SURETY COMPANY and/or THE WESTERN FIRE INSURANCE COMPANY, Fort Scott, Kansas, as Surety, hereinafter called Surety, are held and firmly bound unto

**BOARD OF PUBLIC WORKS, CITY OF FORT WAYNE, INDIANA**(Here insert full name and address or legal title of the Owner)as Oblige, hereinafter called Owner, in the amount of **FIVE HUNDRED NINETY-SIX THOUSAND THREE HUNDRED SIXTY FOUR AND 00/100THS** Dollars  
~~(\$596,364.00-----)~~, for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.WHEREAS, Contractor has by written agreement dated March 27, 19 85, entered into a contract with Owner for **SOUTHWEST INTERCEPTOR S-2, RESOLUTION NO. 408-85**  
**Phase II, Gravity Sewer - Lower Huntington Road**  
in accordance with Drawings and Specifications prepared by **OWENS RUSSELL ASSOCIATES**  
**1402 East State Boulevard, Fort Wayne, Indiana 46805**  
(Here insert full name and address or legal title of Architect)

which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

**NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION** is such that, if Contractor shall promptly and faithfully perform said contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the Owner.

Whenever Contractor shall be, and declared by Owner to be in default under the Contract, the Owner having performed Owner's obligations thereunder, the Surety may promptly remedy the default, or shall promptly

(1) Complete the Contract in accordance with its terms and conditions, or

(2) Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or, if the Owner elects, upon determination by the Owner and the Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and Owner, and make available as Work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price," as used in this paragraph, shall mean the total amount payable by Owner to Contractor under the Contract and any amendments thereto, less the amount properly paid by Owner to Contractor.

Any suit under this bond must be instituted before the expiration of two (2) years from the date on which final payment under the contract fails due.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Owner named herein or the heirs, executors, administrators or successors of the Owner.

Signed and sealed this 27 day of March, A. D. 19 85

In the presence of:

**BERCOT, INC.** (Seal)  
 By [Signature] (Principal)  
[Signature] (Title)

THE WESTERN CASUALTY AND SURETY COMPANY  
 THE WESTERN FIRE INSURANCE COMPANY

By [Signature]  
 Attorney-in-Fact

Jennifer J. Suprecht

Performance Bond for General Contractors.

SB 5715 (1)

FORM FS 5617-R4

MUL.



POWER OF ATTORNEY

The Western Casualty and Surety Company

HOME OFFICE — FORT SCOTT, KANSAS

KNOW ALL MEN BY THESE PRESENTS: That THE WESTERN CASUALTY AND SURETY COMPANY, of Fort Scott, Kansas, a corporation of the State of Kansas, having its principal office in the city of Fort Scott, Kansas, pursuant to the following Bylaw, which was adopted by the Stockholders of the said Company on December 2, 1953, to-wit:

"Section 27. RESIDENT OFFICERS AND ATTORNEYS-IN-FACT. The president, any vice president or the secretary shall have power and authority to appoint resident vice presidents, resident assistant secretaries and attorneys-in-fact, and to give such appointees full power and authority to make, execute and deliver in the name and on behalf of the corporation, bonds, recognizances, contracts of indemnity and other undertakings and writings of obligatory nature, and to affix thereto the corporate seal of the corporation. The president, any vice president or the secretary shall also have power at any time to remove and revoke the authority of any such appointee." does hereby nominate, constitute and appoint

Jerry C. Waak of Fort Wayne, Indiana

its true and lawful agent(s) and Attorney(s)-in-Fact, to make, execute, seal and deliver for and on its behalf, as Surety, and as its act and deed:

Any and all bonds and undertakings.

Provided, No authority is extended for the execution of Open Penalty Bonds.

And the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Company, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its offices in Fort Scott, State of Kansas, in their own proper persons.

The following Resolution was adopted at the Quarterly Meeting of the Board of Directors of The Western Casualty and Surety Company, held on the 10th day of November, 1970:

"RESOLVED, That the signatures of officers of the Company and the seal of the Company may be affixed by facsimile to any Power of Attorney executed in accordance with Section 27 of the Company Bylaws, and that any such Power of Attorney bearing such facsimile signatures, including the facsimile signature of a certifying Assistant Secretary, and facsimile seal shall be valid and binding upon the Company with respect to any bond, undertaking or contract of suretyship to which it is attached."

All authority hereby conferred shall remain in full force and effect until terminated by the Company.

IN WITNESS WHEREOF, THE WESTERN CASUALTY AND SURETY COMPANY has caused these presents to be signed by its Vice-President, and its corporate seal to be hereunto affixed this 17th day of October, 1978

THE WESTERN CASUALTY AND SURETY COMPANY

By

V. J. O'Gorek  
Vice President



STATE OF KANSAS ss  
COUNTY OF BOURBON

On this 17th day of October, A. D., 1978, before the subscriber, a Notary Public in the State of Kansas in

and for the County of Bourbon, duly commissioned and qualified, came V. J. O'Gorek, Vice President of THE WESTERN CASUALTY AND SURETY COMPANY, of Fort Scott, Kansas to me personally known to be the individual and officer described in, and who executed the preceding instrument, and he acknowledged the execution of the same, and being by me duly sworn, depose and saith, that he is the officer of the Company aforesaid, and that the seal affixed to the preceding instrument is the corporate seal of said Company, and the said corporate seal and his signature as officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Company, and that Bylaw, Section 27, adopted by the Stockholders of said Company, referred to in the preceding instrument, is now in force.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at the City of Fort Scott, the day and year first above written.

My appointment expires September 5, 1980

R. R. Shepard  
Notary Public.



I, G. R. Cantrell, Assistant Secretary of THE WESTERN CASUALTY AND SURETY COMPANY, do hereby certify that the above and foregoing is a true and correct copy of a power of attorney executed by said THE WESTERN CASUALTY AND SURETY COMPANY, which is still in full force and effect.

IN WITNESS WHEREOF, I have signed this certificate at Fort Scott, Kansas, this 21st day of March, 1985.

G. R. Cantrell  
Assistant Secretary.







Bond No. 53 74 11

# THE WESTERN CASUALTY AND SURETY COMPANY

FORT SCOTT, KANSAS

A STOCK INSURANCE COMPANY

## LABOR AND MATERIAL PAYMENT BOND

Approved by The American Institute of Architects, A.I.A. Document No. A-311 Feb. 1970 ED.

Note: This bond is issued simultaneously with performance bond in favor of the owner conditioned on the full and faithful performance of the contract.

### KNOW ALL MEN BY THESE PRESENTS:

That BERCOT, INC.  
(Here insert full name and address or legal title of the Contractor)  
6015 HUGUENARD ROAD, FORT WAYNE, INDIANA 46818  
as Principal, hereinafter called Principal, and THE WESTERN CASUALTY AND SURETY COMPANY, Fort Scott, Kansas, as Surety, hereinafter called  
Surety, are held and firmly bound unto

BOARD OF PUBLIC WORKS, CITY OF FORT WAYNE, INDIANA  
(Here insert full name and address or legal title of the Owner)  
as Oblige, hereinafter called Owner, for the use and benefit of claimants as hereinbelow defined, in the amount of FIVE HUNDRED NINETY-SIX THOUSAND THREE HUNDRED SIXTY FOUR AND 00/100THS Dollars  
(Here insert a sum equal to at least one-half of the contract price)

(\$ 596,364.00), for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has by written agreement dated March 27, 1985 entered into a contract with Owner for SOUTHWEST INTERCEPTOR S-2, RESOLUTION NO. 408-85  
Phase II, Gravity Sewer - Lower Huntington Road  
in accordance with Drawings and Specifications prepared by DWENS RUSSELL ASSOCIATES  
1402 East State Boulevard, Fort Wayne, Indiana 46805  
(Here insert full name and address or legal title of Architect)

which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Principal shall promptly make payment to all claimants as herein after defined, for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

1. A claimant is defined as one having a direct contract with the Principal or with a subcontractor of the Principal for labor, material, or both, used or reasonably required for use in the performance of the contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.

2. The above named Principal and Surety hereby jointly and severally agree with the Owner that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The Owner shall not be liable for the payment of any costs or expenses of any such suit.

3. No suit or action shall be commenced hereunder by any claimant,

(a) Unless claimant, other than one having a direct contract with the Principal, shall have given written notice to any two of the following: The Principal, the Owner, or the Surety above named, within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal, Owner or Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer.

(b) After the expiration of one (1) year following the date on which Principal ceased work on said Contract, it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

(c) Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the project, or any part thereof, is situated, or in the United States District Court for the district in which the project, or any part thereof, is situated, and not elsewhere.

4. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of mechanics' liens which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against this bond.

Signed and sealed this 27 day of March A. D. 19 85

In the presence of:

BERCOT, INC. (Seal)

By [Signature] (Principal)  
(Title)

THE WESTERN CASUALTY AND SURETY COMPANY

By [Signature] Attorney-in-Fact

Jennifer J. Ruprecht



POWER OF ATTORNEY

The Western Casualty and Surety Company

HOME OFFICE — FORT SCOTT, KANSAS

KNOW ALL MEN BY THESE PRESENTS: That THE WESTERN CASUALTY AND SURETY COMPANY, of Fort Scott, Kansas, a corporation of the State of Kansas, having its principal office in the city of Fort Scott, Kansas, pursuant to the following Bylaw, which was adopted by the Stockholders of the said Company on December 2, 1953, to-wit:

"Section 27. RESIDENT OFFICERS AND ATTORNEYS-IN-FACT. The president, any vice president or the secretary shall have power and authority to appoint resident vice presidents, resident assistant secretaries and attorneys-in-fact, and to give such appointees full power and authority to make, execute and deliver in the name and on behalf of the corporation, bonds, recognizances, contracts of indemnity and other undertakings and writings of obligatory nature, and to affix thereto the corporate seal of the corporation. The president, any vice president or the secretary shall also have power at any time to remove and revoke the authority of any such appointee." does hereby nominate, constitute and appoint

Jerry C. Waak of Fort Wayne, Indiana

its true and lawful agent(s) and Attorney(s)-in-Fact, to make, execute, seal and deliver for and on its behalf, as Surety, and as its act and deed:

Any and all bonds and undertakings.

Provided, No authority is extended for the execution of Open Penalty Bonds.

And the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Company, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its offices in Fort Scott, State of Kansas, in their own proper persons.

The following Resolution was adopted at the Quarterly Meeting of the Board of Directors of The Western Casualty and Surety Company, held on the 10th day of November, 1970:

"RESOLVED, That the signatures of officers of the Company and the seal of the Company may be affixed by facsimile to any Power of Attorney executed in accordance with Section 27 of the Company Bylaws, and that any such Power of Attorney bearing such facsimile signatures, including the facsimile signature of a certifying Assistant Secretary, and facsimile seal shall be valid and binding upon the Company with respect to any bond, undertaking or contract of suretyship to which it is attached."

All authority hereby conferred shall remain in full force and effect until terminated by the Company.

IN WITNESS WHEREOF, THE WESTERN CASUALTY AND SURETY COMPANY has caused these presents to be signed by its Vice-President, and its corporate seal to be hereunto affixed this 7th day of October, 1983

THE WESTERN CASUALTY AND SURETY COMPANY

STATE OF KANSAS  
COUNTY OF BOURBON ss

By

*J. F. Heim*  
Vice President



On this 7th day of October, A. D., 1983, before the subscriber, a Notary Public in the State of Kansas in

and for the County of Bourbon, duly commissioned and qualified, came J. F. Heim, Vice President of THE WESTERN CASUALTY AND SURETY COMPANY, of Fort Scott, Kansas to me personally known to be the individual and officer described in, and who executed the preceding instrument, and he acknowledged the execution of the same, and being by me duly sworn, depose and saith, that he is the officer of the Company aforesaid, and that the seal affixed to the preceding instrument is the corporate seal of said Company, and the said corporate seal and his signature as officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Company, and that Bylaw, Section 27, adopted by the Stockholders of said Company, referred to in the preceding instrument, is now in force.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at the City of Fort Scott, the day and year first above written.

*R. R. Shepard*  
Notary Public.



My appointment expires September 5, 1984

I, G. R. Cantrell, Assistant Secretary of THE WESTERN CASUALTY AND SURETY COMPANY, do hereby certify that the above and foregoing is a true and correct copy of a power of attorney executed by said THE WESTERN CASUALTY AND SURETY COMPANY, which is still in full force and effect.

IN WITNESS WHEREOF, I have signed this certificate at Fort Scott, Kansas, this 21st day of March, 1985.

*G. R. Cantrell*  
Assistant Secretary.





TITLE OF ORDINANCE Contract No. 408-85, Phase II, Southwest Interceptor S-2, GM

DEPARTMENT REQUESTING ORDINANCE Board of Public Works & Safety *S-85-0414*

SYNOPSIS OF ORDINANCE Contract No. 408-85, Phase II, Southwest Interceptor S-2, GM,  
is for Sanitary Sewer beginning at a proposed manhole, being a part of this construction  
phase and the terminus of Phase I, located 6 $\pm$  L.F. North and 230  $\pm$  L.F. East of the  
centerline intersection of Orchard Ridge Drive and Lower Huntington Road; thence  
Westerly along Lower Huntington Road with a 21 inch diameter sewer 5,275 $\pm$  L.F. to a  
proposed manhole; thence continuing westerly along Huntington Road with an 18 inch  
diameter sewer 3,313 $\pm$  L.F. to a proposed manhole which will be a part of this Phase II  
of this resolution and located 12 $\pm$  L.F. South and 6 $\pm$  L.F. East of the centerline  
intersection of Coverdale Road and Lower Huntington Road. Bercot, Inc., Contractor.

PRIOR APPROVAL RECEIVED 3/12/85

EFFECT OF PASSAGE Sewer for above location.

EFFECT OF NON-PASSAGE \_\_\_\_\_

MONEY INVOLVED (DIRECT COSTS, EXPENDITURE, SAVINGS) \$596,364.00

ASSIGNED TO COMMITTEE \_\_\_\_\_



BILL NO. S-85-04-14

REPORT OF THE COMMITTEE ON CITY UTILITIES

WE, YOUR COMMITTEE ON CITY UTILITIES TO WHOM WAS  
REFERRED AN (ORDINANCE) (~~RESOLUTION~~) approving Contract #408-85,  
Phase II, Southwest Interceptor S-2, GM, by ~~the~~ City of Fort Wayne  
by and through its Board of Public Works and Safety and Bercot, Inc.,

HAVE HAD SAID (ORDINANCE) (~~RESOLUTION~~) UNDER CONSIDERATION AND BEG  
LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID (ORDINANCE)  
(~~RESOLUTION~~)

YES

NO

Thomas C. Henry  
THOMAS C. HENRY  
CHAIRMAN

Janet G. Bradbury  
JANET G. BRADBURY  
VICE CHAIRWOMAN

Donald J. Schmidt  
DONALD J. SCHMIDT

James S. Stier  
JAMES S. STIER

Charles B. Redd  
CHARLES B. REDD

CONCURRED IN 4-23-85

SANDRA E. KENNEDY  
CITY CLERK